



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

November 1, 2005

CERTIFIED RETURN RECEIPT  
7002 0510 0003 8603 2779

Stephen G. Bunn  
8960 North Highway 40  
Lakepoint, Utah 84074

Subject: Proposed Assessment, Ophir Limestone, Broken Arrow, Inc., Cessation Order MC-2005-03-07(1), S/045/067, Tooele County, Utah

Dear Mr. Bunn:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Paul Baker, on October 12, 2005. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-05-03-07- Violation 1 of 1      \$110

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal

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Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock  
Assessment Officer

DRH:jb  
Enclosure: Worksheet  
cc: Vicki Bailey, Accounting  
Vickie Southwick, Exec. Sec.  
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**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Broken Arrow/ Ophir Limestone PERMIT S/045/067

NOV / CO # MC-05-03-07(1) VIOLATION 1 of 1

ASSESSMENT DATE November 1, 2005

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS** 0

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

to Property

*Mining without appropriate approvals/ Environmental Harm/ Damage*

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to file a notice of intention to commence mining operations with the Division of Oil Gas and Mining prior to conducting mining operations. An area has been disturbed at this location without the operator having obtained approval to do so or without posting a bond. Rock and mineral material has been excavated from the site using mechanized equipment and some rock has been hauled from the site. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 0

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that mining operations were being conducted in a previously disturbed area. The inspector indicated that no damage was occurring as a result of this activity, since the area had been previously disturbed and no new disturbance was occurring.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA  
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 20

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector indicated that the operator was not aware of the need for a permit from DOGM for this operation. He did not realize that removing the landscape rock from private land would be considered to be a mining operation. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to obtain a permit prior to conducting mining operations. No contact was made to the Division, to verify the need for a permit. Once the requirements were explained to the Operator, he was very cooperative and expressed the desire to achieve compliance. The Operator was considered negligent primarily out of ignorance and the confusion about what constitutes mining operations, thus the assignment of points in the lower third of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

\*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS -20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The violation was issued on October 12<sup>th</sup> and terminated on October 18<sup>th</sup>. This was well ahead of the 30 day abatement period allowed in the violation. The Operator was extremely diligent in correcting the violation. He came to the Division's office the same day that the violation was issued and commenced the process of abatement. Reclamation surety was submitted the following day. This is one of the quickest abatements to have occurred when plans are required. Thus the assignment of maximum good faith points.*

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # <u>MC-05-03-07-01</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>20</u>
III. TOTAL NEGLIGENCE POINTS	<u>5</u>
IV. TOTAL GOOD FAITH POINTS	<u>-20</u>
TOTAL ASSESSED POINTS	<u>5</u>
TOTAL ASSESSED FINE	<u>\$ 110</u>